

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION
STATIONS**

The Association of Public Television Stations hereby submits its comments in the above captioned proceeding.¹ APTS is a nonprofit organization whose members comprise nearly all of the nation's 356 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members.

In response to a remand from the U.S. Court of Appeals for the District of Columbia Circuit,² the Commission has proposed rules that would require, in most circumstances, stations with at least five full-time employees to (a) widely disseminate information concerning each full-time job vacancy; (b) provide notice of each full-time job vacancy to recruitment organizations that have requested such notice; and (c) complete two or four (depending on station's size) longer-term recruitment initiatives from a list of 12 within a two-year period. The Commission

¹ See Second Notice of Proposed Rulemaking, FCC 02-363, MM Docket No. 98-204 (rel. December 21, 2001) ("NPRM").

² See MD/DC/DE Broadcasters Association v. FCC, 236 F.3d 13, 2001 U.S. App. LEXIS 570, 84 Fair Empl. Prac. Cas. (BNA) 1376 (D.C. Cir. 2001), *reh'g den.* 253 F.3d 732, 2001 U.S. App. LEXIS 13709, (June 19, 2001).

has also proposed that stations with five or more full-time employees collect and retain information concerning all full-time jobs filled, recruitment sources used, description of any supplemental recruitment initiatives used, and other information. These stations would continue to be required to complete an Annual Public File Report, an Annual Employment Report, and at renewal time an EEO Program Report. In addition, the Commission has proposed a number of new policies, including: (1) increasing the number of employees a station must have before it is required to undertake recruitment initiatives; and (2) allowing stations to submit the Annual Employment Report (which details the ethnicity and gender of a licensee's workforce) anonymously.

As a system, public television strongly supports outreach efforts designed to encourage the hiring of minorities and women. As part of its mission, public television is committed to providing programming that addresses the needs of the unserved and underserved. Accordingly, it supports the Commission's goal of assuring that its licensees affirmatively seek out, recruit and promote qualified minorities and women while also giving licensees flexibility in choosing the means to accomplish this goal.

In these comments, public television requests that the Commission allow governmental or university noncommercial licensees to satisfy the Commission's EEO recruitment requirements by demonstrating their compliance with established state or municipal government-mandated or university-mandated EEO recruitment requirements. This will eliminate an unnecessary additional burden on governmental and university licensees who already comply with complex recruitment requirements of their own and foster comity between federal and state governments. Alternatively, the Commission could allow for case-by-case waivers of its EEO recruitment requirements based on compliance with state, municipal or university recruitment requirements.

In addition, public television supports the Commission's proposal to increase the number of employees a station must have before it is required to undertake recruitment initiatives and to allow stations to submit the Annual Employment Report anonymously. Lastly, public television urges the Commission to recognize the use of student internships and part-time workers in assessing a station's EEO practices.

I. Public Television Stations Actively Seek Minority and Female Applicants

Public television is committed to the providing employment opportunities to qualified employees without regard to gender or race. As demonstrated by the Corporation for Public Broadcasting's recent report to Congress on employment trends among public television licensees, public television stations have continued to strive for racial and gender equity in their employment and promotion practices. As that report indicated, while the number of minority employees in public television decreased, the percentage of public television employees who were individuals of color remained constant.³ Further, the percentage of minorities hired by public television stations during that period exceeded their representation in the workforce. Specifically, CPB reported that, for public television, where minorities comprise 18.4 percent of all employees, 26.6 percent of those hired were members of minority groups.⁴ Moreover, public

³ CPB reported that "[P]ublic television minority employment declined at the same rate as total employment, leaving the overall percentage of minorities employed in public television unchanged," with both minority and total employment experiencing a 3.6 percent decline. Corporation for Public Broadcasting, Public Broadcasting and the Needs of Minority and Diverse Audiences and Public Broadcasting's Services to Minorities and Other Groups: A Report to the 107th Congress and the American People Pursuant to Pub. L. 100-626 (December 2001) (hereinafter "CPB Report"), p. 105.

⁴ CPB Report, p. 106.

television's commitment to female employment is second to none with women filling 47 percent of all jobs and 43 percent of all executive-level jobs within the system in 1998.⁵

II. Public Television's Mission is to Address Minority and Other Underserved Audiences

This commitment to racial and gender equity is also reflected in the programming provided by public television stations. Section 396 of the Communications Act reaffirms the mission that public broadcasting stations offer programming that addresses the needs of unserved and underserved audiences including the needs of this nation's minorities.⁶ Keenly aware of this statutory charge, the public television system has developed a number of national and local initiatives to bring diverse programming to American television. For instance, the Corporation for Public Broadcasting's initiative, "I, too, am America," provides support to the National Minority Programming Consortia, the Diversity Fund and the New Voices/ New Media Fund. The objectives of the initiative are to develop new audiences for public television, develop new talent representing the diversity of our audiences, and to support the development and delivery of new and diverse content and services.⁷ In addition, last year, the public broadcasting system engaged in a Television Race Initiative in which stations focused outreach efforts on several programs that addressed the issues of race, diversity and multiculturalism in America. Through its model of community engagement, the Television Race Initiative uses storytelling to frame

⁵ See Geneva Collins, "'Dropping the Ladder' for other Women: They Gain a Larger Role in Pubcasting," Current (May 22, 2000), available at: www.current.org/pb/pb009w.html.

⁶ 47 U.S.C. § 396(a)(6).

⁷ CPB Report, p. 7.

discussions around the sensitive dynamic of race relations in America, providing models for public screenings and community discussions throughout the country.⁸

Consistent with its mission to address underserved and minority audiences, public television stations nationwide broadcast numerous programs reflecting the cultural, ethnic, and racial diversity of this country. This past year, public television stations throughout the nation distributed programming of minority interest, often with significant online components, developed by the Public Broadcasting Service (PBS), American Public Television (APT), the Independent Television Service (ITVS),⁹ the National Minority Programming Consortia¹⁰ and others. A listing of representative programs is provided at Appendix A. Moreover, public television stations have engaged in numerous outreach practices specifically designed to address the needs of minorities and women in their communities. From Sacramento in the West to Norfolk in the East, public television stations have worked to create sustainable partnerships between and among community members and the stations to promote diversity and to create common ground for solutions. Some representative examples of the outreach efforts of local public television stations are provided at Appendix B.

⁸ Indeed, the national commitment among public television stations to address issues of minority concern is so strong that CPB commissioned a minority needs study last year to specifically and closely assess the viewing habits and interests of minority Americans on a national scale. CPB Report, p. 15.

⁹ The Independent Television Service (ITVS) was established to encourage the development of programming that involves creative risks and addresses the needs of unserved and underserved audiences, including minorities.

¹⁰ The National Minority Consortia consists of five independent organizations: Latino Public Broadcasting, the National Asian American Telecommunications Association, the National Black Programming Consortium, Native American Public Telecommunications, Inc., and Pacific Islanders in Communications.

III. Governmental or University Licensees, Who Must Comply with Comprehensive Government-Mandated and/or University-Mandated EEO Recruitment Programs Should Be Allowed to Use Those Programs to Demonstrate Compliance with FCC Rules or Be Allowed to Apply for Waivers of the FCC's Rules

Public television urges the Commission to allow governmental or university licenses that must already comply with established governmental or university-mandated EEO requirements to meet the FCC's requirements by complying with their own EEO programs. As the Commission is aware, many public television stations are governmental agencies or are affiliated with state universities or other governmental entities. These stations already must comply with complex and rigorous EEO compliance programs administered by local, state, or university officials – programs that are also frequently subject to review by other agencies of the federal government. These EEO programs require exhaustive recruiting, recordkeeping, and reporting procedures.

For instance, WSBE, which is licensed to the Rhode Island Public Telecommunications Authority, a quasi-public agency of the State of Rhode Island, annually submits an Affirmative Action Plan to the state Equal Opportunity Office. In addition to requiring the station to provide statistical summaries of its workforce, the state also requires the station to recruit from among 55 different state, minority and civic organizations for every vacancy for a period of no less than five days.

Other state or governmental licensees have similar requirements. The Mississippi Authority for Educational Television requires recruitment in media with significant minority or female viewership or circulation, as well as requiring recruitment among educational institutions with significant minority and female enrollment. Other required sources of recruitment include minority and women's organizations and state employment services.

In addition, state licensees are frequently required to engage in extensive reporting efforts that track minority and female hiring among state agencies. For instance, each fiscal year the Oklahoma Educational Telecommunications Authority, state licensee of Oklahoma Public TV, is required to submit an EEO/Affirmative Action Plan with narrative and spreadsheet sections to various state government panels for review.

Moreover, many universities, such as the University of New Mexico, Montana State University, the University of New Hampshire, the University of Arizona and Florida Gulf Coast University operate under university-promulgated rules and regulations that govern the number, source and duration of recruitment methods. Recruitment outreach frequently varies depending on the type of position desired and frequently requires substantial recordkeeping and reporting. Weblinks to certain representative examples of the recruiting, recordkeeping and reporting requirements that apply to university licensees are provided at Appendix C for the Commission's review.

To require an additional set of federal recruiting, recordkeeping, and reporting measures in addition to government or university requirements is both unnecessary and financially burdensome. The governmental agencies and universities to which these licensees must report are just as concerned as the Commission is to ensure equal employment opportunities for all, regardless of gender or race. Allowing institutional and governmental licenses to rely on these programs to meet the FCC's requirements would recognize the legitimacy of these state and local government programs, thereby serving the interests of comity between federal, state and local governments. Accordingly, public television requests that the Commission create an exemption to its EEO rules, or in the alternative, provide for case-by-case waivers, for stations that already

follow substantially similar or more stringent EEO rules as part of their affiliation with a local or state government or university.¹¹

IV. Public Television Supports Exempting Stations with Ten or Fewer Full-Time Employees

In its Notice, the Commission sought comment on applying its outreach requirements only to entities with more than 10 full-time employees.¹² Public television supports this proposed policy. It is consistent with a reasonable sensitivity to the resources available to small stations, a substantial number of which comprise the public television system. This proposal would fairly balance the need for gender and racial equity against the practical everyday requirements of small station operations.

Public television stations are noncommercial enterprises that must struggle to conserve their resources in an era of diminished funding. Approximately 46 percent of noncommercial stations are small stations with operating budgets under \$3 million. In addition, approximately 36 percent of noncommercial stations serve markets other than the top 100 markets. Small stations and those in small markets often have the fewest funding options and must face difficult choices on a daily basis concerning how to deploy their limited resources effectively. Further, noncommercial stations in general, and these stations in particular, often have difficulty attracting and retaining qualified minority employees because they must compete with commercial stations that can offer higher salaries. Thus, public television supports any

¹¹ The Commission might require these licensees to submit descriptions of their EEO programs with their renewal applications or as part of any periodic EEO filing in order to demonstrate that they are reasonably designed to foster the Commission's EEO goals.

¹² NPRM, ¶ 48 (“[W]e request comments as to whether we should increase the threshold to exempt broadcast and cable employment units of ten or fewer full-time employees from the outreach requirements”) See also *Id.* at ¶ 29.

regulatory reforms— such as the proposed exemption for stations with fewer than 10 full-time employees — that would assist small noncommercial stations in achieving EEO goals more effectively and more efficiently.

V. Public Television Supports Anonymous Reporting

In its Notice, the Commission sought comment on allowing the Annual Employment Report (Form 395-B) to be submitted anonymously.¹³ Public television supports this proposal. The report itself provides the FCC with sufficient information to examine industry-wide trends with regard to EEO matters. Indeed, the Commission has made it clear that, “the collection of this data was intended only for analyzing industry trends and reporting to Congress” and that “the data would not be utilized for the purpose of assessing any aspect of an individual entity’s compliance with the EEO rules.”¹⁴ Allowing Form 395-B to be submitted anonymously will, consistent with the Commission’s needs, sufficiently separate the Commission’s enforcement function from its industry analysis function. Allowing anonymous submission of Form 395-B will also make the new EEO rules more sustainable in the face of judicial scrutiny.¹⁵

VI. The Commission Should Recognize the Use of Student Internships and Part-Time Workers in Assessing Stations’ EEO Practices

Lastly, public television requests that the Commission consider not only a licensee's recruitment procedures and self-assessment of those procedures, but also other programs in

¹³ NPRM, ¶ 51.

¹⁴ NPRM, ¶ 50.

¹⁵ See *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, 18-19, 2001 U.S. App. LEXIS 570, 84 Fair Empl. Prac. Cas. (BNA) 1376 (D.C. Cir. 2001) (holding that reporting requirements in association with the Commission’s now abandoned “option B” pressured licensees to focus their recruiting efforts on women and minorities).

which the licensee participates that improve the training of, and expand the employment opportunities available to, minorities and women. In this regard, public television notes that many noncommercial stations licensed to universities have a substantial number of student interns, including minority and women students. These internship-training programs allow students to gain valuable, hands-on experience in television and radio station operations. As such, these internship programs could have a very positive long-term effect on the employment prospects of women and minorities in the broadcast industry.

Public television also urges the Commission to consider part-time positions when it assesses the adequacy of the recruitment efforts. Often public television licensees rely heavily upon employees working part-time to operate their stations. Failure to acknowledge those employees gives an inaccurate picture of the licensee's EEO efforts. For these reasons, public television requests that the Commission include both interns and part-time employees in evaluating a station's EEO practices.

Conclusion

Public television supports the Commission's newly proposed EEO recruitment rules and respectfully requests additional modifications to Commission policy discussed above in order to respect the needs and resources of governmental, university and smaller noncommercial licensees.

Respectfully submitted,

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APPENDIX A

Representative Programming Offered by Public Television Stations that Addresses the Needs and Interests of Minorities

- Programs that feature the **Latino American** experience:
 - American Family, the continuing story of a Mexican American family in contemporary Los Angeles.
 - Numerous local bilingual cultural public affairs programs, such as Reflexiones (KUAT, Tucson), Impacto (KVCR, San Bernardino), Colores! (KNME, Albuquerque), and Adelente! (WMVS, Milwaukee).
- Programs that feature the **African American** experience:
 - Masterpiece Theater's American Collection: Cora Unashamed, Langston Hughes' story of an African-American woman's life in rural Iowa in the early 1900's.
 - Marcus Garvey: Look for Me in the Whirlwind, a biography of the charismatic black nationalist leader of the 1920's.
 - Africa, an eight-part landmark documentary series that explores the African continent through the eyes of Africans, presents intimate portraits of African people and illustrates the dynamic relationship between Africa's human history, its environment and its culture.
 - Numerous local cultural and public affairs programs specifically designed to address issues of concern to the African American community, such as Afro-American Role Models (WBCC, Cocoa, Florida), Talking Point: Black Perspectives (WILL, Urbana, Illinois), Basic Black (WGBH, Boston), American Black Journal (WTVS, Detroit), Mosaic (KETC, St. Louis), and Black Nouveau (WMVS, Milwaukee).
- Other programs that address issues and history associated with **religious minorities**:
 - Islam: Empire of Faith, a three-part series telling the story of the great sweep of Islamic power from the birth of Mohammad to the peak of the Ottoman Empire.
 - Heritage: Civilization and the Jews, a multi-part series narrating Jewish history from antiquity to the present.
- Programs centered on the **Native American** experience:

- POV: In the Light of Reverence, profiles of Native American groups struggling to protect sacred sites.
- Independent Lens: The Return of the Navajo Boy, documenting the reunion of a Navajo family.
- Robert Mirabal: Music from a Painted Cave, a musical program with Native American flutist.
- The Living Biographies, interviews with tribal elders produced by KEET, Eureka.
- Waasnabida: We Look in All Directions, a series on Ojibwe history and culture produced by WDSE, Duluth.
- The Native Voices Public Television Project, KUSM, Montana State University project to support independent film and television productions that focus on Native Americans.
- Numerous other programs produced by Prairie Public Television, South Dakota Public Television, and KRSC, Claremore, Oklahoma.
- Programming centered on the **Asian-American** experience:
 - Sewing Woman/ Double Solitaire/Fighting Grandpa, three shorts about a Chinese immigrant, Japanese internment during the Second World War and a Korean immigrant.
 - Hidden Korea, exploring Korea's culture through food and food history.
 - We Served with Pride: The Chinese American Experience in WWII, the story of 28 Chinese Americans who served during WWII.
- Programming centered on the **Pacific Islander** experience:
 - Hawaii: Songs of Aloha, a celebration of Hawaiian music and dance.
 - Great Performances: Holo Mai Pele, a recreation of Hawaiian legend for modern audiences.
- In addition, a number of other local stations also regularly offer programs designed to address the needs of **local minorities**.
 - For instance, WBYE in Philadelphia offers programs from local and international sources and in native languages including Ukrainian, Italian, Greek, Hindi, Vietnamese, Korean and Polish.

APPENDIX B

Representative Examples of Outreach Efforts Addressing Issues of Diversity

- The National Center for Outreach, using the resources of Wisconsin Public Television and the University of Wisconsin, was established in December of 2000 to provide a number of services to local public television stations to assist them in providing meaningful outreach to local communities.
- KVIE, Sacramento, adopted an outreach initiative, *Many Faces Many Voices*, which identified more than 100 programs for broadcast and convened town meetings to discuss diversity in their community.
- In Ohio, WVIZ, Cleveland also spear-headed a special diversity initiative, called *Different People Common Ground*, whose purpose was to create community-wide awareness of the value of diversity in the Cleveland area.
- In South Carolina, public television stations there undertook a major statewide project to examine issues that continue to divide the races in that state, producing four 90-minute programs that allowed for interaction with panelists and a live audience.
- And in Virginia, WHRO, Norfolk, offered a major community outreach program, *Colors All Our Own*, which involved over 100 community partners for a region-wide conversation on race.
- One particularly successful outreach program that addressed minority issues was conducted by public television station WCET-TV in response to racial unrest in Cincinnati.
 - In April 2001, after the city of Cincinnati had been rocked by a civil unrest provoked by the shooting of an African American man by police, WCET-TV designed a comprehensive programming and outreach effort to constructively engage the community in a discussion of race relations and to heal the wounds that had been inflicted on the city.
 - WCET-TV became a founding member of the Cincinnati Media Collaborative, a group of almost thirty broadcasters publishers and other media outlets working to facilitate the largest discussion about race in Cincinnati.
 - A special broadcast, entitled *Common Ground: Working for Change*, was aired on September 6, 2001.
 - At an associated live community action forum, featuring a studio audience of 90 people from the community, a moderator fielded questions from the audience for a panel of community leaders. Throughout the broadcast, viewers were able to phone and e-mail questions and comments. Over 120 e-mails were received and

over 140 questions were called in. Viewers were also offered numerous volunteer opportunities in coordination with the Greater Cincinnati United Way & Community Chest.

- This community engagement continued beyond this single event throughout the spring and summer of 2001, where WCET featured a number local community leaders on its weekly public affairs program, *Focus*.
- In addition WCET has developed an extensive series of lesson plans and classroom resources based on the *Common Ground* programming. Entitled, *Focus on Diversity: From Civil Unrest to Racial Equality*, the lesson plans help teachers lead class discussions on concepts such as diversity, conflict and cooperation in the context of recent events.

APPENDIX C

Representative EEO Recruitment Policies of University Licensees

Montana State University

<http://www.montana.edu/wwwaffirm/rhmcop.htm>

University of New Mexico

<http://www.unm.edu/~ubppmanual/3210.htm>

University of New Hampshire

<http://usnh.unh.edu/OLPM/USY/V.Pers/C.3.htm>

University of Arizona

<http://w3fp.arizona.edu/affirm/searchg.htm>

Florida Gulf Coast University

<http://www.fgcu.edu/eeo/index.html>